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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

VENICE KIDS COUNT et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES et al., Defendants and Respondents; LOS ANGELES HOMELESS SERVICES AUTHORITY, Real Party in Interest.	B282453 (Los Angeles County Super. Ct. No. BS165917)

APPEAL from a judgment of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Affirmed.

Luna & Glushon, Kristina Kropp, for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, Shaun Dabby Jacobs, Deputy City Attorney, for Defendants and Respondents.

Westminster Park is a public park located in the Venice neighborhood of respondent City of Los Angeles (the City). In 2016, at the request of the city council, the City's Board of Recreation and Park Commissioners (Board) voted to convert a defunct senior citizens' center at Westminster Park to a facility that would provide storage and other services to the homeless population. Petitioners Venice Kids Count, Heidi Roberts, and Katrina Glusac (collectively, petitioners) sought a writ of mandate to set aside the Board's approval of the project because it allegedly violates the City's zoning ordinance. We consider whether the Board, to which the city charter grants authority to "operate and control" park property, had authority to approve the converted use notwithstanding the City's zoning ordinance.

I. BACKGROUND

Westminster Park is a 2.24-acre public park located in the Venice area of the City. The park was established "in or about 1950," and a senior citizens' center was built at the park in the 1970's. All senior citizens' programs were cancelled in 2009, and the senior citizens' center closed.

In 2016, the councilmember for the district in which the park is located moved the city council to request that the Board authorize use of the defunct senior citizen center building to provide free storage and other services to the homeless population. As summarized by petitioners, "[the Board's] approval of the Project consisted of three parts: (1) authoriz[ing] 'minor maintenance and facility improvements' to the existing senior citizens' center, to be completed by [Board] staff and on-call contractors; (2) . . . issu[ing] of a temporary Right-of-Entry

Permit to [the Los Angeles Homeless Services Authority] to use[,] manage[,] and operate the new homeless services and storage center; and (3) find[ing] that the Project was categorically exempt from the California Environmental Quality Act . . . ."

Upon learning of the planned conversion of the senior center into a homeless services center, petitioners sought a writ of mandate "directing the City and its departments, including [the Board], to set aside their approval of the [Westminster Park project] and to require that the use of Westminster Park, including the subject property and subject building, comply with all applicable laws including the City's own Zoning Code."[1] Petitioners fear that the homeless services center will "negatively impact[ ] and cause severe harm to the surrounding community." As alleged, petitioners' legal theory is that Westminster Park is zoned for "Open Space" use under the City's zoning laws and the open space designation prohibits the former senior citizen center's use as a homeless services center.

The City demurred to the petition. It argued that the Board's authority under the Los Angeles City Charter (the charter) to "operate and control" park property is not subject to the zoning ordinance. The trial court sustained the demurrer, agreeing that the Board's "management of its facilities is . . . not bound by zoning ordinances because any such ordinances cannot

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[1] Petitioners notified the trial court that, prior to filing their petition, they filed a complaint for declaratory relief seeking a declaration that the Westminster Park project violates the terms of the 1950 order of condemnation limiting the property to use for "public playground and recreation purposes." The cases were not related and that issue is not before us for decision in this appeal.

interfere with [the Board's] authority under the Charter to 'operate and control' its facilities 'wherever located.'" Petitioners were given leave to amend, but declined and instead accepted entry of judgment against them.

II. DISCUSSION

The sole issue before us is whether the Board's authority under the charter to "operate and control, wherever located . . . all parks of the City of Los Angeles" gave it authority to approve the homeless services center use notwithstanding Los Angeles Municipal Code section 12.04.05's restrictions on the uses of land zoned Open Space. Petitioners contend the zoning ordinance can be "harmonize[d]" with the charter because it limits only "the manner" in which the Board operates and controls parks. We are not persuaded that in this instance, the Board's authority to operate and control City parks is compatible with limitation by the zoning ordinance. We reach this conclusion because the terms "operate" and "control" are broad, because the charter expressly provides the Board's authority *is* subject to certain other ordinances, and because the charter omits more general limitations on the Board's authority that a previous charter included.

A. Standard of Review

We review an order sustaining a demurrer de novo. (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010; *Morales v. 22nd Dist. Agricultural Assn.* (2016) 1 Cal.App.5th 504, 537.) "[W]hen a demurrer is sustained with leave to amend, but the plaintiff elects not to amend, it is presumed on appeal that the complaint

states the strongest case possible. [Citation.] Thus, a judgment of dismissal following the failure to amend must be affirmed if the unamended complaint is objectionable on any ground raised in the demurrer. [Citation.]" (*Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 10.)

B. General Principles Regarding Conflicts Between City Charters and City Ordinances

"'"The Government Code classifies cities as either 'general law cities' (cities organized under the general law of California) or 'chartered cities' (cities organized under a charter).'" [Citation.]" (*Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 435.) In a charter city, "[the] charter bears the same relationship to ordinances that the state Constitution does to statutes. [Citation.] While a city charter may be amended by a majority vote of the electorate [citation], an ordinance cannot alter or limit the provisions of a city charter. [Citation.]" (*Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, 1034; accord, Cal. Const., art. 11, § 5, subd. (a) ["It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith"]; see also *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170 [noting "the cardinal principle that the charter represents the supreme law of the City, subject only to

conflicting provisions in the federal and state constitutions and preemptive state law"].)

In discussing the legal relationship between a city charter and city ordinances in context of the facts presented here, the parties principally focus their attention on two opinions: *O'Melveney v. Griffith* (1918) 178 Cal. 1 (*O'Melveney*) and *Marculescu v. City Planning Com.* (1935) 7 Cal.App.2d 371 (*Marculescu*). We shall accordingly begin with an exegesis of these decisions.

In *O'Melveney*, *supra*, 178 Cal. 1, our Supreme Court resolved a dispute between the Board's precursor entity, the Board of Park Commissioners (the BPC), and a rival commission created by ordinance. With Griffith Park already established as a public park, Griffith J. Griffith offered to build two structures within the park: "one a 'Greek theater' . . . [and] the other a 'hall of science and observatory' . . . ." (*Id.* at p. 2.) Griffith proposed to furnish the plans, "subject to the approval of the city council and mayor, or a committee, and the structures were to be erected under the supervision of three citizens appointed for that purpose by the mayor of the city, thereto authorized by ordinance." (*Id.* at pp. 2-3.) The city council adopted the contemplated ordinance and established a board of three commissioners to manage construction. (*Id.* at p. 3.)

Members of the BPC then sought to enjoin these commissioners from "interfering with the powers and duties of the [BPC]." (*O'Melveney*, *supra*, 178 Cal. at p. 2.) The city charter in effect at the time empowered the BPC to, among other things, "'have general supervision, control, care and custody of all real and personal property owned by the city of Los Angeles and used in and about the parks or park system'" and, "'[s]ubject to

such ordinances as may from time to time be adopted by the council, to have and to exercise charge, superintendence and control of the design, location, construction, maintenance and use of all buildings . . . or other structures in such parks . . . .'" (*Id.* at pp. 3-4.)

Our Supreme Court found the ordinance creating the new commission was "a surrender by the city council of some of the powers of [the BPC] vested in [the BPC], not by the city council, a[nother] creature of the charter, but by the charter itself." (*O'Melveney*, *supra*, 178 Cal. at p. 4.) In other words, "one of the boards created by the people [i.e., the city council] [sought] to take from another board [i.e., the BPC], also created by the people through its charter, a power expressly vested by the people in the latter board." (*Id.* at pp. 4-5.) This move, the Court held, was legally improper and "violative of the fundamental law of the city and opposed to the wishes of the people thereof as declared in the fundamental law of said city . . . ." (*Id.* at p. 5.)

In *Marculescu*, *supra*, 7 Cal.App.2d 371, landowners sought a writ prohibiting the San Francisco City Planning Commission from hearing a petition brought by neighbors who opposed a zoning decision concerning the landowners' property. (*Id.* at p. 373.) The city charter provided that such petitions could be brought by "'*an* interested property owner'" (emphasis ours) and that "'[t]he board of supervisors, by ordinance, shall establish procedure for action on such matters.'" (*Id.* at pp. 373-374.) The relevant ordinance, by contrast, provided that such petitions could only be brought by "*the owner of the property*" subject to the zoning determination. (*Id.* at p. 373.)

The landowners argued the ordinance merely clarified the charter's ambiguous reference to "'an interested property owner.'"

(*Marculescu*, *supra*, 7 Cal.App.2d at p. 374.) The Court of Appeal disagreed, however, finding that the word "interested" had "a uniform and definite meaning" when the charter was adopted and rejecting "the legislative attempt in the ordinance to change the meaning of the charter." (*Id.* at pp. 375-376.) The Court of Appeal emphasized that, "[t]o be valid, an ordinance must harmonize with the charter" and "[a]n ordinance can no more change or limit the effect of the charter than a statute can modify or supersede a provision of the state Constitution." (*Id.* at pp. 373-374.)

Petitioners' view of *O'Melveney* and *Marculescu* is that an ordinance may intrude upon authority bestowed by charter so long as the intrusion is not too great. In other words, the ultimate issue is not the *fact* of conflict, but the *degree* of conflict, such that petitioners draw a line between improper ordinances that are "inconsistent" with or "not in compliance with" city charters and, they say, proper ordinances that govern only the "manner" in which authority granted by charter is exercised. There is no basis, however, for petitioners' assumption that a charter must accommodate ordinances of the latter variety.

A charter might accommodate ordinances regulating the manner in which the power it grants is exercised, but it need not do so. Thus, the *O'Melveney* court's contrast of the ordinance at issue in that case with a hypothetical ordinance in which "the council sought . . . to direct the [Board] as to the *manner* in which they should act in the location, maintenance, or use of buildings in a public park" (*O'Melveney*, *supra*, 178 Cal. at p. 4, italics added) does not suggest that the hypothetical ordinance would be consistent with every city charter. Rather, it underscores that the charter then in effect expressly provided that the Board's

"'charge, superintendence and control'" of such matters was "'[s]ubject to such ordinances as may from time to time be adopted by the council.'" (*Id.* at p. 3.) (As discussed *post*, the charter no longer includes this clause.) In our view, the fundamental principle illustrated by *O'Melveney* and *Marculescu* is that the question of whether charter-derived authority may be limited by ordinance depends on the terms of the charter itself.[2]

C. The Board's Authority to "Operate and Control" Parks Is Not Subject to the Zoning Ordinance

"[T]he same principles of construction that apply to statutes also apply to the interpretation of charter provisions." (*Arntz v. Superior Court* (2010) 187 Cal.App.4th 1082, 1092, fn.

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[2] The City cites *Sunny Slope Water Co. v. City of Pasadena* (1934) 1 Cal.2d 87 for the proposition that "it is quite clear that the city is not bound by its own zoning ordinances." (*Id.* at p. 98.) Because this case can be resolved on the narrower ground that the Board's operation and control of City parks is not subject to the zoning ordinance, we do not reach the "difficult question of the liability of a city for violating its *own* zoning laws." (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 940, fn. 19.)

Relatedly, petitioners cite (for the first time in reply) Government Code section 53091, subdivision (a), which provides that "[e]ach local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated." The Board is not a "local agency" for purposes of Government Code section 53091. (Gov. Code, § 53090 [defining "local agency" as "an agency of the state for the local performance of [a] governmental or proprietary function within limited boundaries"]; *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal.App.4th 366, 375.)

5.) "'In construing a provision adopted by the voters our task is to ascertain the intent of the voters. [Citation.] We look first to the words themselves, which should be given the meaning they bear in ordinary use. [Citations.] If the language is clear and unambiguous there is no need for construction and courts should not indulge in it. [Citation.] However, this plain meaning rule does not prohibit a court from determining whether the literal meaning of a charter provision comports with its purpose, or whether construction of one charter provision is consistent with the charter's other provisions. [Citation.] Literal construction should not prevail if it is contrary to the voters' intent apparent in the provision. [Citation.]" (*Id.* at pp. 1091-1092.)

Article V, section 590 of the charter provides that "[t]he Department of Recreation and Parks shall have the power and duty: [¶] (a) to establish, construct, maintain, operate and control, wherever located: [¶] (1) all parks of the City of Los Angeles; [¶] (2) all recreational facilities, museums, observatories, municipal auditoriums, sports centers and all lands, waters, facilities or equipment set aside or dedicated for recreational purposes and public enjoyment; and [¶] (3) all property acquired by it or assigned to its jurisdiction for public recreation." The City suggests the Board authorized the Westminster Park project pursuant to the "operate and control" clause. The verbs "operate" and "control" do not suggest any inherent limitations on the Board's authority with respect to City parks. (See, e.g., Oxford English Dictionary (2018) <http://www.oed.com/view/Entry/131741?rskey=LlZPb6&result=2#eid> [as of Aug. 20, 2018] [defining "operate" variously as "1. *intransitive.* [¶] a. To exercise force or influence, produce an effect; to act, work" and "8. *trans.* orig. *U.S.* To manage, to direct

the operation of (a business, enterprise, etc.); to carry out or through, apply (a principle, a tradition, etc.)"]; Oxford English Dictionary (2018) <http://www.oed.com/view/Entry/40563?isAdvanced=false&result=2&rskey=mUzpXv&> [as of Aug. 20, 2018] ["control" means "3. [¶] a. *transitive.* To exercise power or authority over; to determine the behaviour or action of, to direct or command; to regulate or govern"]; Black's Law Dict. (10th ed. 2014) p. 403, col. 1 [defining "control" as "1. To exercise power or influence over" and "2. To regulate or govern"].)

Although the charter subjects certain exercises of the Board's authority to limitation by ordinance, nothing in the charter suggests the Board's operation and control of park property is generally subject to limitation by ordinance. For example, section 590, subdivision (e) of the charter provides that the Board has the power and duty "to establish, maintain and operate playgrounds or other recreational facilities upon portions of public streets, *under terms and conditions provided by ordinance*." (Italics added.) Similarly, the charter provides the Board's authorization of certain easements and rights-of-way "shall be subject to regulation by ordinance" (L.A. City Charter, § 594, subd. (c)(1)) and "[l]eases in excess of five years shall be approved by the Council by ordinance" (L.A. City Charter, § 595, subd. (a)). The absence of such language in section 590 of the charter is good reason to believe the drafters of the charter (and the voters who ratified it) expected the Board's operate and control authority over City parks would operate independent of City zoning laws. (See *Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 583 [legislature's codification of one exception but not

another showed it "clearly knew how to enact a[n] . . . exception . . . , but it chose not to do so"].)

The ubiquity of express limitations on the authority of parks departments in other city charters—from both a historical and a comparative perspective—is yet another reason to be skeptical of implied limitations on the Board's charter-derived "operate" and "control" powers. As mentioned *ante*, the precursor of the Board in place when *O'Melveney* was decided had been given "'charge, superintendence and control of the design, location, construction, maintenance and use of all buildings, pavilions and other structures'" in City parks subject to "such ordinances as may from time to time be adopted by the council." (*O'Melveney*, *supra*, 178 Cal. at pp. 3-4.) The charter today includes no such limitation on the Board's operation and control of City parks. And it is not as though such limitations are uncommon in modern city charters: Parks departments in several other large Southern California cities are either expressly subject to city ordinances or are confined to an advisory role. (See, e.g., San Diego City Charter, art. V, § 55 [providing the City Manager "shall have the control and management of parks," but that "[t]he City Council shall by ordinance adopt regulations for the proper use and protection of said park property . . ."]; Long Beach City Charter, art. IX, § 902, subd. (b) [providing Parks and Recreation Commission may "[r]ecommend to the City Manager, City Council and Planning Commission the approval or rejection of plans for improvement of parkland . . ."]; Pasadena City Charter, tit. 2, art. III, § 2.100.110 ["The purpose of the [Parks and Recreation Commission] is to advise the city council on all matters concerning recreation, recreational use and programs and all related features of 'dedicated parkland' . . ."].) In this

context, it is not plausible to read the charter's grant of authority to the Board as subject to the zoning ordinance on the facts here.

Finally, we are not persuaded by petitioners' argument that the Board's historical practice of "seeking use and development variance determinations, coastal development permits, and other entitlements and deviations under and from the City's Zoning Code . . . demonstrates that [the Board] is well aware of the applicability of the Zoning Code to its actions." Petitioners' argument relies on two coastal development permits and three zoning variance determinations requested by the Board between 1998 and 2004 and allege the Board sought building permits in connection with the Westminster Park project.

Although "'[a]dministrative interpretations [of City Charter provisions] of longstanding [vintage] are entitled to great weight unless they are plainly wrong'" (*Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 350), petitioners have not alleged a longstanding interpretation of the charter or the zoning ordinance. Coastal development permits are required under *state* law. Regardless of whether the zoning ordinance applies to the Board, there is no dispute that the Board must obtain state-law-mandated coastal development permits. (See Pub. Res. Code, § 30600, subd. (a).) In addition, two of the three zoning variance determinations cited by petitioners predate the current charter. Moreover, neither the zoning variance determinations nor the building permits commit the Board to the view that it is subject to the zoning ordinance. As the City explained in the reply in support of its demurrer, "applications may be made for many purposes, whether political, financial, or other reasons [*sic*], all having nothing to do with zoning laws."

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

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BAKER, Acting P. J.

We concur:

MOOR, J.

SEIGLE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.